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Letter dated 20 December 2004 from the Permanent Representative of Côte d'Ivoire to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to inform you that the basic laws called for under the Linas-Marcoussis and Accra III Agreements were approved on 17 December 2004 at a plenary meeting of the National Assembly.

No further bills relating to the reforms envisaged in the aforesaid Agreements are currently before the President of the Republic. The National Assembly will adopt the remaining bills concerning these Agreements within the next few days, during a special session to be concluded on 31 December 2004.

Tribute should be paid to the mediation efforts of President Thabo Mbeki and to all those whose good-faith efforts made this breakthrough possible. In accordance with President Mbeki's road map, the country should proceed as soon as possible with the disarmament, demobilization and reintegration process, which is designed to bring about the reunification of the country and facilitate the holding of the referendum on article 35 concerning the conditions of eligibility for the presidency of the Republic, in accordance with article 126 of the Ivorian Constitution.

Article 126 stipulates clearly that with respect to amendments concerning the election of the president, the Constitution may be amended only by referendum: "Any bill or proposed amendment regarding the election of the President of the Republic, the exercise of the presidential mandate, the vacancy of the presidency of the Republic or the procedure for amending the present Constitution shall be submitted to a referendum".

In this regard, it is worth recalling that in one of his periodic reports on the United Nations Operation in Côte d'Ivoire (ONUCI), the Secretary-General requested President Laurent Gbagbo to postpone the holding of referendums on nationality and land tenure laws and focus only on the referendum concerning conditions of eligibility for the presidency of the Republic (article 35). The Secretary-General wrote: "In this regard, it should be noted that only the amendment of article 35 is constitutionally mandated to be submitted to a referendum" (S/2004/3). As this statement clearly indicates, the Secretary-General recognized that an amendment to article 35 "is constitutionally mandated to be submitted to a referendum".

For its part, the Security Council, in its initial resolution on the Ivorian conflict and in its later statements of position on the matter, reaffirmed "its

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endorsement of the agreement signed by the Ivorian political forces at Linas-Marcoussis on 24 January 2003", which agreement recognizes the institutions of Côte d'Ivoire and hence its current Constitution.

After Parliament had approved an amendment to article 35 with a view to holding the necessary referendum, certain lobbying groups and political organizations proposed that President Gbagbo should violate the Constitution by enacting article 35, as amended by Parliament, without submitting it to a referendum. This is clearly a political manoeuvre designed to turn the people of Côte d'Ivoire against their President. By their actions, these lobbyists and other politicians are actually pushing the President to deprive the Ivorian people of their fundamental right to express their views on this crucial issue, a right that is expressly provided for in the Constitution. Any conflict that might subsequently ensue as the result of such an unconstitutional solution would then be blamed on the President. The President may not, in any case, tamper with the Constitution that he solemnly swore to protect at his inauguration in October 2000.

Lastly, it should also be noted that the Constitution explicitly states that it cannot be amended so long as the country is divided: "No amendment procedure may be initiated or pursued when the integrity of the national territory is threatened" (article 127). Accordingly, no one may proceed with the referendum on article 35 until the country has been reunified. While President Gbagbo wishes to finish amending article 35, adherence to the rule of law and to the Constitution require that the country be reunified (e.g., by completion of the disarmament, demobilization and reintegration process) so that subsequently the amendment to article 35 can be put to a referendum.

On instructions from my Government, I therefore have the honour to solemnly draw your attention to the requirement to respect the rule of law and the Constitution of Côte d'Ivoire, with a view to achieving a lasting solution to the country's crisis.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(*Signed*) Philippe **Djangoné-Bi**
Ambassador
Permanent Representative